

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NICHOLE WALKINSHAW, TYSHA)	
BRYANT, APRIL ENDICOTT, HEATHER)	
NABITY, MEGHAN MARTIN,)	
ALANDREA ELLWANGER, TROY)	
STAUFFER, and all other similarly situated)	Case No. 4:19-cv-03012-BCB-SMB
former or current employees of Defendant,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
COMMONSPIRIT HEALTH f/k/a)	
CATHOLIC HEALTH INITIATIVES, CHI)	
NEBRASKA d/b/a CHI HEALTH, and)	
SAINT ELIZABETH REGIONAL)	
MEDICAL CENTER,)	
)	
Defendant.)	

**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND PRELIMINARY APPROVAL OF SETTLEMENT**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs, by and through their undersigned counsel, hereby move the Court for an order conditionally certifying this action as a class action with respect to Counts II through VII for settlement purposes and preliminarily approving a class and collective action settlement as follows:

1. Certifying Count II pursuant to Rule 23(a) and Rule 23(b)(3) on behalf of the "Class" defined as follows, for settlement purposes:

All persons who are or were alleged to be jointly or severally employed by CommonSpirit Health and/or by its predecessor Catholic Health Initiatives, CHI Health, and/or SERMC, as medical nurses in the State of Nebraska, who were paid an hourly wage, and who were subject to the on-call practice or policy

respecting compensation for working remotely while on an on-call shift, from February 6, 2015 through April 11, 2022, at the following locations: CHI Health Laboratory in Omaha, Nebraska; Creighton University Medical Center in Omaha, Nebraska; Good Samaritan Hospital in Kearney, Nebraska; Immanuel Hospital in Omaha, Nebraska; Lakeside Hospital in Omaha; Midlands Hospital in Papillion, Nebraska; CHI Health Nebraska Heart in Lincoln, Nebraska; CHI Health – Plainview in Plainview, Nebraska; CHI Health in Schuyler, Nebraska; Saint Elizabeth Regional Medical Center in Lincoln, Nebraska; Saint Francis Hospital in Grand Island, Nebraska; and CHI Health – Saint Mary’s in Otoe, Nebraska.

2. Certifying Counts III, IV, and VII pursuant to Rule 23(a) and Rule 23(b)(3) on behalf of the “2017 Subclass” of the Class defined as follows, for settlement purposes:

All persons who are a Class Member and were subject to the on-call policy of Defendants respecting compensation for worked performed remotely while on an on-call shift from June 1, 2017 until September 30, 2018 at the following locations: Creighton University Medical Center; Good Samaritan Hospital in Kearney, Nebraska; Immanuel Hospital in Omaha, Nebraska; Lakeside Hospital in Omaha; Midlands Hospital in Papillion, Nebraska; Saint Elizabeth Regional Medical Center in Lincoln, NE; and Saint Francis Hospital in Grand Island, Nebraska or at another location subject to a similar policy.

3. Certifying Counts V, VI, and VII pursuant to Rule 23(a) and Rule 23(b)(3) on behalf of the “2016 Subclass” of the Class defined as follows, for settlement purposes:

All persons who are a Class Member and were subject to the on-call policy of Defendants respecting compensation for work performed remotely while on an

on-call shift from March 1, 2016 until May 31, 2017, at Saint Elizabeth Regional Medical Center in Lincoln, NE or at another location subject to a similar policy.

4. Appointing Plaintiffs Nichole Walkinshaw, Tysha Bryant, April Endicott, Heather Nabity, Meghan Martin, Alandrea Ellwanger, and Troy Stauffer as Class Representatives of the Class and the 2016 Subclass;

5. Appointing Plaintiffs Nichole Walkinshaw, Tysha Bryant, April Endicott, Heather Nabity, Meghan Martin, and Alandrea Ellwanger as Class Representatives of the Class and the 2017 Subclass;

6. Appointing R. Joseph Barton of Block & Leviton LLP, Vince Powers of Powers Law, and Nicholas Migliaccio and Jason Rathod of Migliaccio & Rathod LLP as Co-Lead Class Counsel;

7. Preliminarily approving the Settlement Agreement between Plaintiffs and Defendants as fair, reasonable, and adequate under Rule 23(e) of the Federal Rules of Civil Procedure;

8. Granting final certification of the FLSA collective that the Court conditionally certified by order dated December 17, 2020 (Doc. # 179) and, for settlement purposes, certifying the following settlement collective, as set forth in the Class Action & Collective Action Settlement Agreement, that is based on the definition of the FLSA collective that the Court conditionally certified but is limited to individuals who filed a consent to join this action and were allegedly employed during the applicable statute of limitations:

The Plaintiffs and persons who: (1) previously filed a consent to join this Action; (2) were allegedly employed by Defendants at any point between December 17, 2017, and December 17, 2020; (3) worked as an hourly rate medical nurse and

were an on-call shift and performed work remotely while on call at any of the following locations: CHI Health Laboratory in Omaha, Nebraska; Creighton University Medical Center in Omaha, Nebraska; Good Samaritan Hospital in Kearney, Nebraska; Immanuel Hospital in Omaha, Nebraska; Lakeside Hospital in Omaha, Nebraska; CHI Health-Mercy in Corning, Iowa; Mercy Hospital in Council Bluffs, Iowa; Midlands Hospital in Papillion, Nebraska; CHI Health Missouri Valley in Harrison County, Iowa; CHI Health – Nebraska Heart in Lincoln, Nebraska; CHI Health – Plainview in Plainview, Nebraska; CHI Health in Schuyler, Nebraska; Saint Elizabeth Medical Center in Lincoln, NE; Saint Francis Hospital in Grand Island, Nebraska; and CHI Health – Saint Mary’s in Otoe, Nebraska.

9. Approving the proposed Class Settlement Notice as to form and content and the plan for dissemination of notice to the FLSA opt-ins and the Class (collectively “the Settlement Class”) as satisfying the requirements of Rule 23(c)(2) and (e)(1);

10. Appointing a third-party Settlement Administrator;

11. Preliminarily approving the proposed Plan of Allocation;

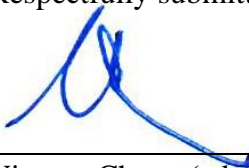
12. Setting dates and deadlines under Rule 23(d) and (e) of the Federal Rules of Civil Procedure in order for the Court to evaluate whether the settlement should be given final approval (after distribution of the proposed Class Settlement Notice and submission of claim forms, any objections to the settlement, and exclusions from the settlement, and for a fairness hearing on final approval of the settlement), to evaluate Plaintiffs’ counsel’s request for an award of attorneys’ fees and reimbursement of costs and expenses and Plaintiffs’ request for a service award as follows:

Deadline for Defendants to provide Class Data	21 days after execution of Settlement Agreement
Deadline for Settlement Administrator to provide notice to the Settlement Class	30 days after Preliminary Approval Order
Deadline for Settlement Administrator to provide declaration regarding Class Settlement Notice	30 days after Notice is sent
Deadline for Class Counsel to file motion for award of attorneys' fees and costs and for Service Award for Class Representatives	14 days before deadline for date for objections
Deadline for Class Members to (a) request to opt out of the Settlement; or (b) file objections to the Settlement;	45 days after Notice is sent
Deadline for Class Members to submit a claim form	120 days after Notice is sent
Deadline for Class Counsel to file Motion for Final Approval of Settlement	14 days before hearing on Motion for Final Approval
Hearing on motion for final approval of settlement and application for attorneys' fees and costs and service awards	At least 100 days after Preliminary Approval Motion is filed

This Motion is supported by the brief in support thereof, the Declarations of R. Joseph Barton, Vince Powers, Jason Rathod, and Vincent Cheng, all of the pleadings and documents on file with the Court in this action, and further evidence and argument as may be submitted prior to the Court's decision on this motion.

Dated: September 27, 2022

Respectfully submitted,



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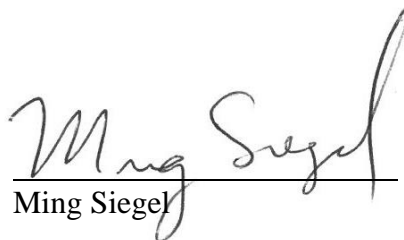
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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Ming Siegel, hereby certify that on September 27, 2022, a true and correct copy of the above and foregoing **PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND PRELIMINARY APPROVAL OF SETTLEMENT** was electronically filed with the Clerk of the Court by using the CM/ECF system, which sends notice to the following counsel of record:

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